



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: AUG 25 2004

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The termination of the applicant's temporary resident status by the Director, California Service Center is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because the applicant failed to file the application for adjustment of status from temporary to permanent residence within the 43-month application period.

On appeal, the applicant asks why her work authorization cards were extended if she filed late for permanent residence. She points out that the rest of her family members are U.S. citizens or lawful permanent residents.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if the alien fails to file for adjustment of status from temporary to permanent resident on Form I-698 within forty-three months of the date he/she was granted status as a temporary resident under § 245a.1 of this part. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on July 1, 1988. The 43-month eligibility period for filing for adjustment expired on February 1, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on August 20, 1999. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

The applicant provides a copy of the temporary resident card issued to her when she was granted temporary residence. Clearly, she was aware that she had been granted temporary residence, unlike some aliens who were erroneously never issued the temporary resident card and therefore believed that they were still *applicants* for temporary residence. If the applicant's parents and siblings acquired permanent residence through the legalization program, which appears to be the case, then they were each aware of the requirement to timely file Form I-698, and successfully did so. If they were aware of the requirement, it would be difficult to conclude that the applicant was not aware.

The applicant also provides a copy of an employment authorization card issued to her on January 5, 2001. As she had failed to file a timely I-698, and the 43-month period had long expired, she was issued that card just to allow her to work during the pendency of the I-698. She was, properly, not issued another temporary resident card, as she had failed to *timely* apply for permanent residence.

The Immigration and Naturalization Service and private voluntary organizations widely publicized the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, the original eligibility period of 31 months was extended to 43 months to better enable applicants to file timely applications. The burden to file the adjustment application in a timely manner remains with the applicant. See 8 C.F.R. § 245a.3(d).

The applicant's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.